



THE ETHICS STANDARD

The Office of General Counsel

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Holiday Greetings

From Secretary Jackson

As the holiday season approaches, I urge everyone to review the gift rules inside this issue of The Ethics Standard. It is imperative that all employees understand these rules before attending certain holiday parties, giving gifts to their coworkers or supervisors, or accepting gifts from employees of HUD contractors or entities that are regulated by the Department.

The holiday season is also a time when many of us enjoy supporting our favorite charities with fundraising, toy or food drives, or by volunteering our time. Once again, we have an obligation to make ourselves aware of relevant rules and regulations.

Holiday generosity in all its forms is central to the American spirit, but there are limits on what we can do in the federal workplace.



As federal employees, we all share some basic obligations: We must put forth an honest effort in the performance of our duties, and be mindful that public service is a public trust.

We must be good stewards of the taxpayers' money, and we must be accountable for our actions in public service.

Most of all, we are obligated to abide by all applicable ethics rules and principles as we go about our work.

As HUD employees, it is important that we stay on the right path and always pursue the highest standards of conduct. If we all uphold high ethical standards, we will enhance the Department's reputation as an agency that is competent, trustworthy, and that truly cares about people.

"I Wish Everyone the Most Joyous of Holiday Seasons."

Frequently Asked Questions about Post-Government Employment Restrictions

A number of years ago, Congress grew concerned that some former executive branch employees were improperly using "inside contacts" to obtain beneficial treatment for their new private employers. In Congress's view, if former Federal employees could influence decisions or actions even after they had left their Federal jobs, it would destroy the public's faith in the impartiality and fairness of government decision-making. In order to prevent this, Congress enacted various statutes that restrict the post-government employment activities of former Federal employees. Some of these restrictions apply to all Federal employees, while others apply only to senior officials or those with recent contract-related responsibilities. Listed below are the answers to

(continued on page 2)

Inside This Issue:



Case Alert -- Courts Rule in Favor of HUD . . . page 5

Guidance Regarding the Acceptance of Holiday Gifts . . . page 5

some of the most frequently-asked questions about post-government employment restrictions.

1. What Post-Government Employment restrictions apply to everyone?

Representation. A Federal criminal law, 18 U.S.C. § 207, prohibits all former Federal employees, regardless of grade or responsibilities, from making certain “representational contacts” following completion of Federal employment. This law does not bar you from working for any particular employer after you leave government service. Rather, its restrictions prohibit former Federal employees from representing back to the government on the same matter that they worked on while in government service.

As an executive branch employee, you are permanently barred from representing anyone (other than yourself or the United States) before any Federal agency or court in connection with any matter that has parties (such as a contract, grant, or lawsuit) if you worked on that matter personally and substantially while you were a government employee. If the matter was under your official responsibility during your last year of Federal service, but you did not personally and substantially participate in it, you are barred from making representational contacts about that matter for two years.

Fee Sharing. If you will be working for a firm that has represented clients before either the executive branch or any court in a matter where the United States was a party or had an interest, another criminal law

at 18 U.S.C. § 203, prohibits you from sharing in the profits earned by the firm for those matters that you worked on where the United States was a party or had a direct and substantial interest during the time you were a Federal employee. For example, if you are a government attorney and you go to work for a private law firm after leaving HUD, you could receive a straight salary from your new law firm, but could not accept any bonus or profit distribution that is based upon fees the firm earned for representing someone to a government agency or in a court matter involving the United States while you were with HUD.

2. I’m a “senior employee” (career or non-career employees in Executive Levels II-V or with basic rate of pay greater than \$136,756.50). What additional restrictions apply to me?

Representation to HUD. If you served as a senior employee during your last year of government service, in addition to the basic restrictions outlined above, you are also restricted for one year from making any representational contacts to HUD on any matter. This restriction has some exceptions for such things as writing a letter of recommendation for someone seeking employment with the Department (provided the recommendation is based on your own personal knowledge and you do not receive compensation for writing the letter), official representation as an employee of a state or local government, and a few other things.

Foreign Representation. Former senior employees also are

restricted for one year after leaving Federal service from representing, aiding or advising a foreign government or entity before any officer or employee of a Federal department or agency. You are also prohibited from representing a foreign entity in dealings with Congress, including congressional staff.

3. What are the additional restrictions for former employees who were involved in procurement-related activities?

Under the “Procurement Integrity” restrictions (41 U.S.C. § 423(d)), a former Federal official may not accept compensation from a contractor on a contract in excess of \$10 million for one year after the official served either as the contracting procurement officer, the source selection authority, a member of the source selection board, or chief of a financial or technical evaluation team; or, as the program manager, deputy program manager, or administrative contracting officer. The one-year restriction also applies if you, regardless of your position, personally made a decision to award, modify, establish overhead or other rates, or approve payments for a contract, subcontract, task order or delivery order over \$10 million, or to pay or settle a contractor’s claim on such a contract.

4. Can I look for other employment while I’m still working at HUD?

Yes, subject to some restrictions. Under the Federal conflict of interest rules (18 U.S.C. § 208 and 5 C.F.R. § 2635.602), you should not take an action on a matter that would affect

(continued on page 3)

Know Your Agency Ethics Officials

The Department has 15 Agency Ethics Officials who are authorized to provide counseling on ethics issues. Six are located in Headquarters and one in each regional office. The following list will be useful to you.

Regional Counsel



Region VII

Thomas Coleman
(913) 551-5478

Headquarters

Designated Agency Ethics Officials (DAEO)

Kathleen D. Koch
Deputy General Counsel
(202) 708-3250

George L. Weidenfeller
General Deputy General Counsel
(Alternate DAEO)
(202) 708-2864

Sam E. Hutchinson
Associate General Counsel
Human Resources Law
(202) 708-0888

Paula A. Lincoln
Assistant General Counsel
Ethics Law Division
(202) 708-3815

Kenneth M. Donohue
Inspector General
DAEO for OIG
(202) 708-0430

Alfred M. Pollard
General Counsel, OFHEO
DAEO for OFHEO
(202) 414-3800

Field

Region I
Miniard Culpepper
(617) 994-8250

Region VI
William J. Daley
(817) 978-5990

Region II
John Cahill
(212) 542-7000

Region VII
Thomas Coleman
(913) 551-5478

Region III
Ann Harrison
(215) 656-0639

Region VIII
Ellen P. Dole
(303) 672-5409

Region IV
Donnie Murray
(404) 331-5001

Region IX
R. Faye Austin
(415) 489-6400

Region V
Courtney Minor
(312) 353-6236

Region X
David Morado
(206) 220-5190

Post-Government Employment Restrictions (continued from page 2)

the financial interests of someone with whom you are seeking or negotiating possible employment. Seeking employment normally includes: sending a resume; discussing the possibility of employment; being asked by a company if you are interested in a position – unless you say “No.” Once you start seeking outside employment, you must recuse (disqualify) yourself from any official matters that might affect the finan-

cial interests of anyone with whom you’re seeking employment. You may be subject to additional restrictions if you participate in certain procurement matters, including the duty to report employment contacts made by you or a bidder or offeror. Finally, remember that if you agree to take a job outside the government, you must refrain from working on matters that would affect the financial interests of your future employer as long as you remain a Federal employee.

5. Who can I contact for post-government employment advice?

It can be difficult to remember the Federal ethics laws and restrictions that govern your conduct while you are looking for a job and after you terminate government service. If you have any questions, please contact HUD’s Ethics Law Division, (202) 708-3815, or your Regional Counsel’s office; or visit the website at <http://hudweb.hud.gov/po/c/ethics.htm>.

Counsel's Corner

by Kathleen D. Koch

Public service is a public trust. As Federal employees, we must all place loyalty to the Constitution, laws, and ethical principles above private gain. One aspect of this obligation that is sometimes overlooked is that, as Federal employees, we are subject to strict limitations regarding outside employment and activities. Among these limitations is the Federal criminal representation statute, 18 U.S.C. § 205, which prohibits Federal employees from acting as an “agent or attorney” for anyone before any department, agency, court, officer, or commission in connection with any matter in which the United States is a party or has a direct and substantial interest. The general idea behind this law is that Federal employees should not be allowed to “switch sides” by representing someone else in an action in which the government is also involved.

You generally act as someone's agent when both you and another person have agreed that you will represent that person or his/her interests, either generally or in connection with some particular matter. Here are some examples of how this prohibition works:

Example 1: My neighbor, an immigrant, has applied to change her visa status and has asked me to accompany her to a meeting at the INS to be her spokesperson. Can I do this? No. You would have to decline, because as a Federal employee you cannot act as someone else's representative (agent) in

a matter before a government official or agency. You could, however, appear as a fact witness on her behalf to confirm purely factual information (such as how long she has lived in your apartment building), provided that you do not attempt to influence the INS in its decision.

Example 2: I would like to make some extra money by preparing other peoples' tax returns. Is this permitted? First, if this outside activity falls into the “same professional field” as your official duties—if, for example, you work as an accountant for HUD—you must get prior written approval from a Department Ethics Official before engaging in this activity. Specifically, HUD's Supplemental Ethics regulation at 5 C.F.R. § 7501.105(c) requires prior written approval for outside compensated or uncompensated employment with an entity that receives grant funding, with a state or local government, or in the same professional field as your official duties. If you obtain such approval, you could then prepare tax returns. Note, however, that you could not represent a tax client in any dealings with the IRS, such as by accompanying a client to an IRS audit to act as their spokesperson. This type of representation is prohibited by 18 U.S.C. § 205 because you would be acting as your client's agent before an agency of the Federal Government.

Example 3: A friend of mine runs a small business and has applied for a loan from the Small Business Administration. My friend has asked me to call up the SBA to “use my pull” to make sure the loan goes through. Can I do this? What about if I don't identify myself as a Federal employee? No. Even if you do not identify yourself as a government employee, pursuant to 18 U.S.C. § 205 you cannot intervene on behalf of someone else in any matter before any Federal department, agency, court, commission, etc.

Example 4: Can I be a Notary Public? It depends. Some notary commissions are issued solely in connection with an employee's official duties and are not intended to be used for personal commercial activities. Employees with these types of commissions should not charge a fee for providing official notary services, and cannot perform private notarizations unless they have a separate commission that is not based on their Federal employment. In addition, acceptance of outside compensation for notary services performed as part of an employee's official duties would amount to extra pay for those duties, which is prohibited under 18 U.S.C. § 209. Because notaries are commissioned by state or local governments, a HUD employee must obtain prior written approval (as described in Example 2) before becoming a notary as an outside activity. Federal employees who have notary commissions that are not connected to their government employment may perform private notary services, but cannot do for-fee notarizations on duty time or in the Federal workplace.

There are some exceptions to 18 U.S.C. § 205. For example, this statute does not prevent Federal employees from representing themselves, their spouses, parents, or children. It also does not restrict representing someone else (such as a co-worker) who is the subject of a disciplinary, loyalty, or other personnel administrative proceeding. The statute also does not prohibit giving testimony under oath, such as serving as a fact witness at a trial or hearing. The rules concerning outside employment can be somewhat complex. If you have any questions about the restrictions on outside employment and activities, we recommend that you seek advice either from your Regional Counsel or from the Ethics Law Division at Headquarters, (202) 708-3815.



Case Alert – The Courts Rule in Favor of HUD

HUD disciplinary actions that removed Department employees for serious ethics violations were upheld in two recent decisions, one by the United States Court of Appeals for the Federal Circuit, and one by the Merit Systems Protection Board (MSPB).

In a decision issued on October 6, 2004, the U.S. Court of Appeals upheld an earlier MSPB ruling affirming that HUD employees must obtain prior written approval before engaging in certain outside activities. In the case of *Howell v. Department of Housing and Urban Development*, the Court of Appeals upheld the dismissal of a HUD employee who was removed for failing to obtain prior approval before declaring herself a candidate for mayor in a non-partisan local election. HUD's

Supplemental Ethics regulation at 5 C.F.R. § 7501.105(c) requires Department employees to obtain prior written approval from an Agency Ethics Official before engaging in paid or unpaid outside employment (1) that involves employment with a for-profit or non-profit organization that receives assistance from the Department; (2) with a State or local government (as was the case here); or (3) for employment that is in the same professional field as the employee's official position.

In this case, the employee's position as a HUD "community builder" created the strong likelihood that there would be a conflict of interest between her official duties and her election campaign to become a town mayor. Various HUD officials repeatedly warned the employee that she needed to obtain prior approval before continuing with her election campaign. The Court of Appeals decision not only upheld the legitimacy of the HUD Supplemental regulation, it also confirmed that an employee's failure to obey legitimate orders from a superior constituted insubordination.

In another case, the MSPB affirmed the removal of a HUD employee who violated the Government-wide Standards of Ethical Conduct regulation at 5 C.F.R. Part 2635 by using her public office for private gain and using nonpublic government information for her personal benefit. In the case of *Suarez v. Department of Housing and Urban Development*, the HUD employee was removed for purposely circumventing the procedures and conditions under which a Department employee may purchase a HUD-owned home (HUD Handbook 4310.5, Rev. 5). The employee allegedly used her position to obtain inside information about the home's price and then arranged to have a close friend purchase the home on her behalf at a discounted price. The MSPB found that the employee intentionally tried to conceal her own interest in the transaction by having the friend make the purchase and by failing to report her interest in the house on her Confidential Financial Disclosure Report, which she was required to complete because of her position at HUD. This case has been appealed and is pending before the United States Court of Appeals for the Federal Circuit.



Holiday Gifts

What is a gift?

A "gift" may include any item having monetary value, including food, drinks, gratuities, favors, hospitality discounts, and entertainment.

May I accept a gift from a prohibited source?

Employees may not directly

or indirectly solicit or accept a gift given by any source because of the employee's official position, and given by a prohibited source. Prohibited sources include persons doing or seeking to do business with HUD as well as anyone substantially affected by the performance or nonperformance of an employee's official duties.

There are some exceptions to the prohibition against the acceptance of gifts from prohibited sources. First,

gifts from relatives or friends (who may be prohibited sources) may be accepted if the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Second, unsolicited gifts that have a market value of \$20 or less may be accepted under certain circumstances.

(continued on page 6)

May I attend a holiday party or reception hosted by a prohibited source?

You may attend and accept food or refreshments of \$20 or less if the event is a "widely attended gathering" (WAG) and an agency ethics official has determined that your attendance is in the agency's interest. A WAG is a term of art that describes many of the events you attend in your official capacity outside of the Federal government. It could be a holiday reception, conference,

panel discussion, training event or an awards dinner.

May I exchange gifts with other HUD employees?

Employees may share the following items during the holiday season and any other time when gifts are traditionally given or exchanged:

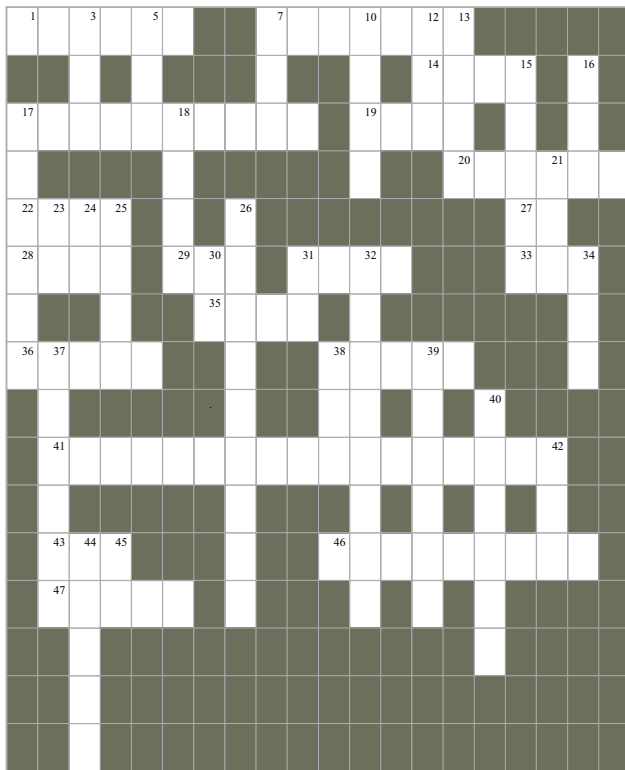
- (1) items other than cash, having a market value of \$10 or less per occasion;
- (2) items such as food and refreshments that are shared in the office among several employees; and
- (3) personal hospitality provided

at a residence of a type customarily provided to friends.

Employees may not, directly or indirectly, give a gift to or make a donation toward a gift for an official supervisor if the value of the gift exceeds \$10. In addition, gifts to co-workers who earn a higher salary are also limited to \$10 in value. Gifts that exceed \$10 must be based on a personal relationship and the co-worker cannot be a supervisor in your chain of authority.

If you have any questions regarding accepting and giving gifts, please contact the Ethics Law Division or your Regional Counsel.

Ethics Crossword Puzzle



The first 20 employees to complete the puzzle will receive a free gift. Employees must submit their completed puzzles to the Ethics Law Division by Friday, December 17, 2004.

Across

1. Knowledge; pearls of ____
7. View ethics training by this mechanism
14. Occurs at swearing-in ceremony
17. HUD employees are prohibited from selling this
19. Diamond; stone
20. Moral principles that the Department promotes
22. 5 C.F.R. ____ 2635 contains ethics regulations
27. Opposite of down
28. Sandwich cookie with cream in the middle
29. Every employee should have an emergency ____
31. Responsibility
33. Ginnie ____
35. Identical
36. Public service is a public ____
38. Astute; political ____
41. If you violate the ethics statutes in Title 18, you are subject to ____
43. Special Government Employee
46. Prohibited Financial ____
47. Section ____

Down

3. Body of salty water
5. Office of Government Ethics
7. Opposite of dry
10. Kathleen Koch emphasizes ____ values
12. Standards of Conduct
13. Accept
15. Routine; dull
16. Office of General Counsel
17. Public/Confidential Financial Disclosure ____
18. ____ employment – 5 C.F.R. § 2635.601
21. Intergovernmental Personnel Act
23. Arkansas
24. Prefix meaning again or back
25. Throw, pitch
26. HUD Supplemental ____ of Ethical Conduct regulations
30. Passive verb
31. Delaware
32. Filers must complete this by December 31, 2004
34. Ethics Law Division
37. What you must do if you are participating in an official matter in which you have a financial interest
38. Feminine pronoun
39. Principles of right and wrong that will govern your behavior
40. If you own Fannie Mae or Freddie Mac stock, you must do this
42. College entrance exam
44. Includes any gratuity, favor, or discount. 5 C.F.R. § 2635.203
45. For example